



**Request for City Council Committee Action
From the Department of ITS
Division of Telecommunications and Media Services**

Date: December 5, 2002

To: Honorable Barbara Johnson, Chair

Referral to: Ways and Means Budget Committee

Subject:

Request Council consideration of options presented by staff in the matter of review of the Transfer of Control request submitted by Time Warner Cable.

Recommendation:

That Council approve one of three options, 1) Take no action, 2) A fund increase appropriation in the amount of \$15,000.00, 3) Deny Transfer of Control request

Previous Directives

No previous Directives

Prepared or Submitted by: Edie French, Director of Telecommunications and Media Services

Approved by:

Karl Kaiser, CIO

John Moir, City Coordinator

Presenters in Committee (name, title)

Financial Impact (Check those that apply)

___ No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)

___ Action requires an appropriation increase to the Capital Budget

___ Action requires an appropriation increase to the Operating Budget

___ Action provides increased revenue for appropriation increase

___ Action requires use of contingency or reserves

x Other financial impact (Explain): Depends on Council Action

x Request provided to the Budget Office when provided to the Committee Coordinator

Background/Supporting Information Attached

Time Warner Cable has submitted a request for City approval of the transfer of the Minneapolis Cable Communication Franchises to the control of a new corporation to be formed by the aggregation of many AOL/Time Warner franchises with those of another major cable TV operator. They are required to obtain this permission by federal and state law and provisions of Minneapolis Code of Ordinances, Appendix H. The company has submitted a number of public documents together with the appropriate Federal Form 394. The Company has insisted that the City should approve the transfer without further investigation, based upon AOL/Time Warner's assurances that the City and/or the cable television subscribers have no risks in the transfer.

Staff has discussed the matter with the Company and requested that the Company provide funds (up to \$10,000) to cover the cost of the examination required to assure that the City and/or the cable television subscribers would not be disadvantaged by such a transfer. The Company has agreed to provide such reimbursement only if the City approves the transfer. Obviously, such a request to approve the transfer prior to any review is unacceptable and against public policy. The Company was given a second option to reaffirm the "Keep Well Agreement" signed by AOL/Time Warner that is currently the only financial guaranty available to the City. In such a case, further review would not be necessary and the City could move forward and approve the transfer of the franchise. The Company has declined that option.

Staff does not believe that the City has sufficient financial and technical information to reach any conclusion regarding the acceptability of the new company that is proposed to hold the Minneapolis franchise. Staff has asked the Company for additional details regarding the transaction, but, to date, has received responses to only two of the four major areas of staff inquiry. City staff does not have the technical skills to evaluate the transaction nor the staff time to complete an analysis that would ensure adequate protection of the City and cable television subscribers. Nor are there sufficient budgeted funds available to hire outside counsel and accountants to perform this review which was unanticipated and resulting solely from Time Warner's decision to reorganize its cable holdings. Staff has found it difficult, in the past, to obtain detailed information from the Company in prior investigations of matters concerning alleged violations of the Franchise Agreement, and there is no reason to believe that the Company will be more forthcoming at this time.

Any further review would need to be completed in time for recommendations to be acted upon by Council at its meeting of December 30, 2002. Under Federal law, Council must take action to approve or deny the transfer by January 4, 2003, or the transfer would be deemed approved without action. If the Council does not act by January 4, 2003, the transfer will be deemed approved by the City. Such an occurrence would have dire consequences for the City and the cable television subscribers should the proposed Transferee not be financially qualified to hold the Minneapolis franchise.

We ask that Council provide direction to staff pursuant to the following alternatives:

Either:

1. Take no action, and allow the transfer to proceed, without review or consideration of the City.
2. Allocate funds to allow staff to engage outside experts to investigate and provide recommendations to Council. (Expected to be between \$10,000 and \$15,000, however such amount could increase if the City decides to deny the application for transfer and Time Warner challenges the determination of the City)
3. Deny approval of the transfer now, on the grounds that
 - a) the City has determined that there are outstanding and unresolved franchise compliance issues that are still in negotiation with the current franchise holder, including but not limited to method of calculation and payment of franchise fees, the performance of the institutional network consistent with current franchise requirements, the customer complaint reporting systems of the company, the payment of franchise fees on cable modem service, and the use of the cable system infrastructure by Time Warner Telecom without the payment of franchise, permit, or any other fees to the City.; and
 - b) the Company has failed to provide financial and technical information regarding the proposed transferee which is sufficient for the City to adequately review the financial, legal and technical qualifications of the proposed Transferee; and
 - c) the Company has refused to agree to reimburse the City for reasonable expenses associated with the application for review filed with the City, resulting in the City's inability to adequately perform its fiduciary responsibility to review the proposed transfer as such review is required by federal, state and local law.; and
 - d) The company has refused to reaffirm the "keep well" agreement currently in existence between AOL/Time Warner and the City.